



Posted on: November 23, 2015

HAS THE LAW ON “JUST CAUSE” FOR A SINGLE INCIDENT CHANGED?

Employment lawyers and human resources personnel are frequently asked whether the conduct of an employee warrants termination for “cause”. Rarely will a single incident of misconduct warrant the dismissal of an employee for cause and without notice. However, in *Steel v. Coast Capital Savings Credit Union*, the trial judge concluded that a single incident of misconduct justified the employer’s termination of an employee for cause. The employee had 21 years of service and an unblemished employment record prior to this one incident. The Court of Appeal upheld the trial decision and the Supreme Court of Canada has refused to hear a further appeal. What can employers and employees learn from this case?

RELEVANT FACTS

Ms. Steel worked for Coast Capital Savings Credit Union (“Coast Capital”) as an IT Helpdesk Analyst. This position enabled her to access any of the employer’s documents, including confidential “Personal Folders” that, normally, could only be read by the employee assigned to the file. Privacy was an issue that was important to Coast Capital and, in addition to having established privacy policies, the credit union also had specific protocols governing IT staff access to Personal Folders. One aspect of the protocol was that permission had to be given to IT staff to access a Personal Folder.

Office parking spots were difficult to get and one manager handled parking space assignments. That manager maintained a waitlist for parking spots and Ms. Steel was curious about her position on the list. Without permission, she accessed the manager’s Personal Folder to check her waitlist position. Unfortunately for the IT employee, the manager tried to access the Personal Folder at the same time and was denied access because someone was already “in” that folder. Ms. Steel was confronted and admitted she had accessed the manager’s Personal Folder for a personal purpose and without the required permission. Coast Capital terminated her employment for cause and without notice.

RELEVANT LEGAL FACTORS

In 2001 the Supreme Court of Canada addressed the issue of termination for cause based upon a single incident of misconduct in *McKinley v. BC Tel*. The court highlighted the principle of proportionality in employee discipline and confirmed there must be a balance between the severity of the misconduct and the consequence. A single incident of misconduct must “give rise to a breakdown in the employment



relationship” to warrant termination for cause. Possible ways to assess this are to ask:

- Does the conduct violate an essential condition of the employment contract?
- Does the conduct breach the employer’s faith in the work relationship?
- Or, is the conduct fundamentally inconsistent with the employee’s obligations?

The reasons of the trial judge in *Steel v. Coast Capital* identify some specific factors which influenced the finding that cause did exist despite the long, unblemished employment history and the single incident of misconduct.

1. The employee’s position was one of trust.
2. Trust was important in the employer’s industry. Specifically, it was noted that employees in the banking industry may be held to a higher standard of trust.
3. It was not practical for the employer to monitor all the documents accessed by IT staff each day in a supervisory way, and therefore, the employer had to rely on the IT staff to comply with the protocols in place.
4. Significant autonomy may also warrant a higher standard of trust.
5. Privacy was known within the credit union to be an important issue.
6. A specific, known, documented employee protocol regarding Personal Folder access existed. The employee was aware of the protocol when the incident occurred.

A majority of the Court of Appeal highlighted the trial judge’s conclusion that, for IT staff at Coast Capital, accessing documents only in accordance with privacy policies was a fundamental obligation that arose in a position that required substantial trust. The majority then concluded the trial judge had not erred in reaching these conclusions, therefore, the determination that a fundamental breakdown in the relationship occurred was upheld.

TIPS FOR EMPLOYERS AND EMPLOYEES

Clear, documented, well known policies and procedures appear to have played an important role in this case. Ensuring that known, written policies and procedures exist can be key to enabling an employer to take disciplinary action if its procedures are not followed. Employees should be conscious that following documented procedures, particularly when a person works in a position of trust or has autonomy in their role, can be essential.

This case does not alter the general law on termination for cause over a single incident of misconduct. The courts must still consider the context of each case and whether some lesser form of discipline would suffice.





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The *Coast Capital* decision provides one example of some specific factors that also warrant consideration when assessing the “relationship breakdown” requirement set out in *McKinley*.



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